

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street
San Francisco, CA 94105**

RH05049799

January 5, 2007

**Title 10, Article 7.1
Proposed Sections 2355.1-2359.7
Title Insurance and Statistical Plan**

VOLUME 4 (Bates Pages 1305-1705)

Summary and Response to Comments Received During 45-Day Comment Period

Pursuant to Gov. Code § 11346.9(a)(3), repetitive comments are aggregated, summarized and responded to as a group. Comments which were not specifically directed at the proposed regulations or procedures followed in proposing the regulations are irrelevant and have been dismissed as a group.

Additionally, because some comments reflect a more technical analysis of the proposed regulations, the summaries for those comments were not summarized as a group. Comments for pages 1470-1518, and 1585-1630, which contain a more extensive technical analysis of the proposed regulations have been organized and summarized by comment volume number. The technical comments for Volume 4 are attached to the end of this summary and response.

Comment:

Each of the bates page numbers referenced below included comments that were not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action or were received after the closing date of the public comment period.

Pages reflecting this comment:

1357, 1382-1383, 1451, 1461, 1468, 1521, 1531, 1532, 1536, 1542, 1561, 1582, 1650, 1681

Response:

Comments were not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action or were received after the closing date of the public comment period. Therefore, no response is necessary. (Gov. Code §11346.9(a)(3).)

Comment:

Regulations will result in fewer choices for consumers to close real property transactions and will make real estate transactions more complex and difficult.

Pages reflecting this comment:

1305, 1314-1315, 1320-1321, 1393, 1394-1395, 1410-1411, 1412, 1414-1415, 1456-1457, 1578-1579, 1631, 1641-1643, 1645-1646, 1647, 1660, 1661, 1664-1665

Response:

See Response to Common Comments C.1, C.3, C.30, C.32, and T.1.

Comment:

Regulations will result in fewer notaries to service and protect consumers from fraud, jeopardize the convenience of notaries coming to consumers to sign documents by reducing compensation to notaries, jeopardize the convenience of consumers who will lose valuable work time or expend monies for additional child care in order to go to a title office to sign documents, or may meet with language barriers, and result in unnecessary closing delays due to low staffing.

Pages reflecting this comment:

1305, 1306-1307, 1312-1313, 1314-1315, 1317-1318, 1319, 1322, 1322A & 1322B, 1323-1325, 1326-1328, 1333, 1337-1338, 1348-1350, 1357-1358, 1366-1368, 1369-1370, 1377, 1381, 1393, 1394-1395, 1396, 1397, 1399, 1400, 1401, 1402, 1404, 1406, 1409, 1410-1411, 1412, 1413, 1414-1415, 1417-1418, 1419, 1425, 1426, 1427, 1429-1431, 1433, 1439-1440, 1441, 1444, 1446-1447, 1449, 1455, 1459-1460, 1465, 1466, 1467, 1469, 1519-1520, 1522, 1533, 1541, 1545, 1546-1547, 1552, 1562-1563, 1564, 1565-1568, 1576-1577, 1578-1579, 1580, 1581, 1631, 1632, 1634-1635, 1636, 1637-1638, 1645-1646, 1651, 1660, 1661, 1662, 1664-1665, 1667, 1668, 1669, 1670, 1671-1672, 1673, 1675, 1682, 1684, 1688-1689, 1696, 1697, 1698, 1699, 1701, 1702-1704

Response:

See Response to Common Comments E.29, N.1. and X.5.

Comment:

Describes Iowa situation in which Iowa's Finance Authority issues title assurance coverage averaging \$110 and many of the same title insurance companies operating in California charge premium rates in Iowa averaging \$115-\$150 per policy, competitive with the title assurance coverage price provided by the Finance Authority.

Pages reflecting this comment:

1308-1311

Response:

Because these comments were not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action or are in support of the regulations, no further response is necessary.

Comment:

Opposes 27% fee reductions for notary services. Current fees are good value for the client, especially in these times of high gas prices and a slowing real estate market. Fee reductions will result in lower income, added workloads, will significantly reduce the chances of notaries becoming signing agents, and will lead to layoffs.

Pages reflecting this comment:

1316, 1322-1322, 1322A & 1322B, 1357-1358, 1359, 1366-1368, 1369-1370, 1371, 1372, 1381, 1382-1383, 1388, 1392, 1393, 1399, 1400, 1404, 1406, 1407-1408, 1410-1411, 1412, 1416, 1419, 1425, 1428, 1429-1431, 1432, 1436, 1444, 1446-1447, 1455, 1458, 1519-1520, 1533, 1537-1539, 1552, 1557, 1571, 1572-1574, 1578-1579, 1580, 1631, 1632, 1634-1635, 1641-1643, 1660, 1662, 1668, 1669, 1670, 1671-1672, 1673, 1684, 1688-1689, 1694-1695, 1697, 1698, 1702-1704, 1705

Response:

See Response to Common Comments C.39, E.9, E.10, E.11, E.25, E.29, N.1., T.13, X.5, X.9, and X.18

Comment:

Commends endeavor to lower closing costs.

Pages reflecting this comment:

1317-1318, 1357

Response:

Because these comments are in support of the regulations, no further response is necessary.

Comment:

Regulations will force consumers to close their own real property transactions which will flood California courts with property dispute lawsuits.

Pages reflecting this comment:

1320-1321

Response:

The Commissioner rejects this comment. There is no reason to believe that the proposed regulations will force consumers to handle their own real property transactions. The Commissioner rejects the claim that qualified businesses will be unable to function under these regulations. See also Response to Common Comments E.19, E.25, E.29, T.1, T.5, T.6, X.9, and X.12

Comment:

Opposes 27% rollback in title/escrow fees and permanent maximum fee schedule for escrow and sub-escrow services. Fee reduction will result in lower income, less flexibility with work hours, longer work hours, and lost jobs in predominantly female work force, with negative impact to consumers in quality of services provided, to independent escrow companies and other small businesses, and to the economy.

Pages reflecting this comment:

1329, 1330, 1331, 1332, 1334, 1335-1336, 1337-1338, 1340, 1341, 1342-1343, 1344-1345, 1346, 1347, 1348-1350, 1352-1353, 1354-1356, 1360-1361, 1362-1363, 1364, 1365, 1369-1370, 1372, 1373-1374, 1375-1376, 1377, 1378, 1379, 1380, 1384-1385, 1386, 1387, 1389-1390, 1396, 1401, 1402, 1403, 1404, 1407-1408, 1412, 1417-1418, 1420-1424, 1427, 1435, 1436, 1437-1438, 1439-1440, 1441, 1442-1443, 1445, 1446-1447, 1448, 1449, 1450, 1452, 1453-1454, 1456-1457, 1462, 1463-1464, 1523, 1524, 1525, 1526, 1527-1528, 1529, 1530, 1533, 1540, 1543-1544, 1555-1556, 1569, 1575, 1585-1630, 1640, 1657-1658, 1659, 1663, 1666, 1667, 1690-1691

Response:

See Response to Common Comments C.3, E.1, E.4, E.8, E.9, E.10, E.11, E.12, E.14, E.15, E.16, E.18, E.19, E.24, E.26, E.27, E.29, and X.18.

Comment:

The escrow field is competitive. Escrow providers compete on basis of fees and level of service and do not make sufficient profits to afford kickbacks. To remain competitive, escrow must constantly analyze their level of education and service and try to improve them.

Pages reflecting this comment:

1330, 1342-1343, 1344-1345, 1346, 1352-1353, 1354-1356, 1360-1361, 1373-1374, 1375-1376, 1378, 1379, 1386, 1389-1390, 1391, 1420-1424, 1441, 1445, 1452, 1454-1454, 1456-1457, 1462, 1463-1464, 1525, 1527-1528, 1529, 1537-1539, 1543-1544, 1549-1551, 1553-1554, 1558-1559, 1583-1584, 1653, 1654, 1655-1656, 1657-1658, 1659, 1666, 1678-1680, 1690-1691

Response:

See Response to Common Comments C.2, C.3, C.11, C.12, C.13, E.3, E.8, E.9, E.10, E.11, E.12, E.13, E.16, E.20, E.22, E.23, E.24, E.26, E.27, E.28, E.29, T.1, X.8, X.9, X.12 and X.18.

Comment:

Commissioner does not understand all the functions that an escrow officer performs. More and more services are required and, in many states, they are performed by attorneys, at higher costs.

Pages reflecting this comment:

1334, 1335-1336, 1342-1343, 1346, 1354-1356, 1360-1361, 1362-1363, 1364, 1365, 1373-1374, 1384-1385, 1386, 1400, 1417-1418, 1435, 1436, 1450, 1452, 1453-1454, 1456-1457, 1558-1559, 1583-1584, 1648, 1653, 1657-1658, 1666

Response:

See Response to Common Comments E.5, T.28, and X.15.

Comment:

Requests the addition of commenter's name to mailing list regarding proposed regulations.

Pages reflecting this comment:

1339, 1349

Response:

The commenters were added to the mailing list for this rulemaking project. Because this portion of the comment is not specifically directed at the proposed action or the procedures followed by the Commissioner in proposing or adopting the action, no further response is necessary.

Comment:

Opposes a cap on fees. Instead, Commissioner should concentrate on policing those that take unfair advantage and commit fraud.

Pages reflecting this comment:

1351, 1373-1374, 1437-1438

Response:

See Response to Common Comments A.3, X.16 and X.17.

Comment:

Opposes regulation of fees. Regulations are burdensome, fail to account for the differences between title insurers and UTCs, fail to account for the differences of doing business in different markets, and fail to account for canceled escrow and title transactions. Reporting

requirements will be costly and time consuming for UTCs. The proposal for interim rates is based on flawed or no data, and will serve to diminish competition and force small and midsize UTCs to sell at distressed prices. Market should determine prices. Enforcing existing laws and consumer education are less burdensome alternatives.

Pages reflecting this comment:

1391, 1428, 1448, 1585-1630

Response:

See Response to Common Comments C.9, E.20, E.21, T.7, T.16, T.18, T.28, X.1, X.8 and X.12.

Comment:

Regulations will strengthen the monopolistic control by large real estate brokerages of home buying transactions and related services and drive independent escrow companies out of the market.

Pages reflecting this comment:

1398

Response:

See Response to Common Comments E.1 and E.27

Comment:

The title marketplace is competitive, enforcement actions are in place, neither statute nor Proposition 103 permit rating setting by the Commissioner, and no findings have been made to invalidate existing rates.

Pages reflecting this comment:

1470-1518, 1549-1551, 1585-1630, 1639

Response:

See Response to Common Comments A.1, A.2, A.3, A.4, A.5, A.6, C.1, C.2, C.3, C.30, C.33, E.11, T.2, T.11, T.14, T.16, X.7, X.11 and X.18.

Comment:

Escrow rates in California are justified and a bargain compared to the way real estate sales and refinances are handled in the rest of the country. Profits for title companies this year are causing forced lay-offs and putting California's economy in dire straits. Rollbacks will

cause massive lay-offs. Reducing escrow fees will not benefit the consumer, but will diminish the escrow service provided.

Pages reflecting this comment:

1420-1424, 1534, 1535, 1543-1544, 1585-1630, 1633, 1644, 1649, 1653, 1654, 1676-1677, 1678-1680

Response:

See Response to Common Comments C.30, E.7, E.11, E.25, T.13 and X.9.

Comment:

Escrow is a complex, stressful and time-limited process. Escrow fees are at the low end of costs compared to loan, mortgage broker and real estate broker fees. Escrow officers are hard working people. Escrow fees have not increased yet cover an increased workload and increased responsibilities on the part of escrow officers. All parties to the transaction should be held accountable, including real estate agents.

Pages reflecting this comment:

1405-1405A, 1420-1424, 1437-1438, 1450, 1452, 1453-1454, 1537-1539, 1543-1544, 1546-1547, 1549-1551, 1555-1556, 1558-1559, 1560, 1578-1579, 1583-1584, 1644, 1648, 1649, 1652, 1655-1656, 1657-1658, 1666, 1674, 1678-1680, 1692

Response:

The Commissioner rejects this comment. To the extent that the commenter believes that the proposed regulations should hold real estate agents accountable for the high costs of title insurance, such agents are generally beyond the Commissioner's regulatory jurisdiction. See also Response to Common Comments E.4, E.7, E.9, E.12, E.13, E.15 and T.9.

Comment:

Independent notaries/document signers provide a level of customer service and convenience that exceeds that of the basic in-house notary who will only notarize signatures, and not explain loan documents.

Pages reflecting this comment:

1404, 1444, 1449, 1548

Response:

See Response to Common Comment N.1.

Comment:

Signing agent notaries have aided the growth of the mortgage industry by enabling more loans to be signed without sacrificing quality of service.

Pages reflecting this comment:

1407-1408, 1414-1415, 1446-1447, 1449, 1552, 1564, 1570, 1631, 1641-1643

Response:

See Response to Common Comment N.1.

Comment:

Proposal to rollback title and escrow fees will translate into culling the number of California notaries, and that is unconstitutional, unwise and exceeds the authority of the Commissioner.

Pages reflecting this comment:

1634-1635

Response:

See Response to Common Comment N.1.

Comment:

Title/escrow companies do not gouge. It is lenders who charge outlandish fees.

Pages reflecting this comment:

1434

Response:

See Response to Common Comment E.8, and T.9.

Comment:

As a real estate brokerage owner, we do not receive compensation from any escrow or title company. Why are you not concerned with the many “in-house” firms which are non-competitive and have discriminating fees?

Pages reflecting this comment:

1676-1677

Response:

The Commissioner rejects the premise of this argument as well as the argument itself. As the proposed regulations reflect, the Commissioner is concerned with “in-house” firms. While some controlled business arrangements are permitted by statute, the proposed regulations will ensure that title entities within the Commissioner’s regulatory authority will not be able to charge fees that are excessive. The proposed regulations represent the most effective way to regulate such fees, within the realm of the Commissioner’s authority as established by the Legislature.

Comment:

The pending proposal to cut title and escrow fees looms like a dark cloud on my future as a notary and as a newly commissioned notary.

Pages reflecting this comment:

1675, 1683, 1693, 1696, 1699, 1700

Response:

See Response to Common Comment N.1.

Comment:

We have kept escrow rates at a minimum in order to compete for a reasonable share of the market. Cutting costs and requiring compliance with the Proposed Annual Financial Data Requirement Reports will be a fatal blow to our small, family-owned UTC, and result in zero competition in our small county.

Pages reflecting this comment:

1685-1687

Response:

See Responses to Common Comment T.7, T.18, X.1, X.2, X.3, X.5, and X.9.

TITLE 10. INVESTMENTS
CHAPTER 5. INSURANCE COMMISSIONER
Article 7.1
***TITLE INSURANCE STATISTICAL PLAN
AND RELATED RULES GOVERNING RATES AND CHARGES***

Summary and Response to Technical Comments Received During
45-day Comment Period

Comment Bates Pages 1470-1518:

Commentator: Old Republic National Title Insurance Company

Date of Comment: Dated August 24, 2006, sent by 2-day service (no indication when received)

Type of Comment: Written

Summary of Comment (page 1):

The first paragraph on page 1 is a preliminary statement.

Response to Comment:

This portion of the comment is not specifically directed at the Commissioner's proposed regulations or to the procedures followed in proposing the regulations, or simply summarizes comments which are summarized and responded to in more detail below. No response is, therefore, necessary. (Gov. Code section 11346.9.)

Summary of Comment (pages 1 - 2):

The title insurance marketplace works. For instance, Old Republic filed a new Schedule of fees and charges for use as of May 15, 2006. This schedule simplified and reduced many title insurance rates, including the Statewide Insurance Rate. On average, this new rate represents a 20% reduction in the insurance rate over the former statewide Basic Insurance Rate and an even greater reduction over its former Shasta County rate. It also replaces the Short Term Rate, formerly applicable if the subject property had been insured within the preceding 60 months.

The Statewide Insurance Rate from the filing memo to the Department provides "[o]ur investigation into the application of the Short Term Rate revealed that it is applicable in at least 80% of the Company's new orders for title insurance. From this analysis we determined that it was possible to withdraw the Short Term Rate and lower our Statewide Insurance Rate thus providing all consumers in California with the benefits of a reduced rate which is available on every property, every day, as opposed to just those properties that have been recently insured, without creating an inadequate rating structure."

Old Republic has also instituted an additional 10% reduction on all policies insuring owner-occupied properties, found in paragraph 1.2 of the new Schedule. Rates were also reduced for policies that insure loan transactions both for owner-occupied residences and for all properties, programs which were described in the filing memorandum as follows:

"For owner-occupied single family residences, we have expanded and revised our former Integrated Refinance Insurance and Settlement Service rate found in paragraph 3.21 on page 27.3 of the previous Schedule to offer reduced title insurance premiums on refinance transactions . . . up to \$2,000,000. On average, these expanded insurance rates, which are shown in paragraph 2.3 of page 9 of the new Schedule represent an approximate reduction of eleven and seven-tenths percent . . .

For properties other than single family or for loans of more than \$2,000,000, the Company now offers a simple financing rate that results in potential reductions of some of our current charges of as much as 30% . . . The new financing rate which is found in paragraph 2.2 of page 8 applies to all loans and therefore is not limited to the replacement of existing insured financing."

Old Republic also reduced other rates with this filing, but the above are examples of some of the significant revisions. Further, Old Republic has been reducing rates for many years, while at the same time expanding coverages. Examples include first time buyers and senior citizens' reductions of 25% filed in January 2000, lower refinance rates filed in March 2001 and centralized service refinance rates which lowered rates for lenders agreeing to specific conditions

for more efficient production in October 2003. Settlement service rates have also been reduced as demonstrated by the bundled services rate (a 10% reduction) filed in January 2000 and a 10% reduction in settlement fees when an electronic medium is used to enhance the efficiency of the escrow process filed in February 2002.

Response to Comment:

To the extent the commenter may have reduced its rates to more reasonable levels (a claim that has not been verified for purposes of this rulemaking file), the reduction will inure to commenter's benefit under the regulations. The proposed regulations are explicit that a rate reduction taken since 2000 will count toward the company's obligations under the interim rates. Similarly, such reductions will make it easier for the commenter to comply with the permanent regulatory system.

If the commenter is tendering its recent filing as evidence of the existence of competition, the Commissioner rejects the comment. The Competition Report has reasonably found that there is not a reasonable degree of competition. The calculations underlying the interim rates has confirmed that the cost of title insurance and escrow services has risen since 2000 far faster than costs, confirming the absence of price-competition to keep prices down. Commenter's anecdotal claim is insufficient to refute this evidence.

Summary of Comment (page 2):

Rates cannot be held excessive. The Commissioner's proposal includes a finding that a reasonable degree of competition does not exist; however, it fails to include the finding mandated by Insurance Code Section 12401.3 that rates are unreasonably high. The Birnbaum Report fails to analyze any individual company's rate filings to see if it is unreasonably high based upon the operating methods of that particular insurer. Since "systems of expense provisions included in the rates for use by any title insurer, underwritten title company, or controlled escrow company may differ from those of other title insurers, underwritten title companies, or controlled business companies," (Insurance Code Section 12401.3(c)), it is inappropriate to make such a finding for the industry as a whole – rather the filing would have to be made for an individual rate filing, as is contemplated by the statute. This has not been done and further, studies seemingly ignored by the Department argue convincingly that the rates are not unreasonably high.

Response to Comment:

The Commissioner rejects this comment. The commenter appears erroneously to assume that the proposed regulations contain a blanket, industry-wide finding that all rates are excessive. The proposed regulations contain no such finding. They do contain an industry-wide finding of the absence of a reasonable degree of competition, which is inherently an industry-wide condition appropriately made by rulemaking. But under the proposed regulations, no rate of any company will be held to be excessive until it is examined under the provisions of subarticle 3 or 4 and found to exceed the specified maxima. Companies will be free to charge whatever rate it wishes,

and to employ whatever system of expense provisions it may choose to employ, so long as the rate or charge does not exceed the applicable regulatory maximum.

Summary of Comment (page 3):

A study of title insurance rates show that title insurance rates have dropped over the last several decades on a dollar per thousand basis while coverages have expanded, contrary to the assertions to the contrary in the Birnbaum Report. See Bruce Stangle and Bruce Strombom's *Competition and Title Insurance Rates in California* at pp. 3-6 attached as Exhibit A. The Birnbaum Report does not consider the impact of expanded coverages, nor does it mention the special discount rates that have proliferated in recent years.

Response to Comment:

The Commissioner rejects this comment. The Commissioner responds to the cited comments elsewhere in this file.

Summary of Comment (page 3) :

Re: rates of return on capital: Dr. Nelson Lipshutz, in his Preliminary Study regarding "Incorrect Conclusions About Competition" in the Birnbaum Report (attached as Exhibit B) finds that the 12-18% profitability rate for title insurers in 2004, one of the best years for the title insurance industry, paled in comparison to the return on equity (ROE) for the companies in the Dow Jones Industrial Average and the Standard & Poor's 500 that year. Other small service industries such as accountants and auditors showed an ROE of 67%, while ROE was 101% for legal services. Lipshutz at p.11. See also Stangle and Strombom at pp. 7-8, including the fact that ROE and profit margins for title insurers are comparable to other lines of insurance.

Response to Comment:

The Commissioner rejects this comment. The Commissioner responds to the cited comments elsewhere in this file.

Summary of Comment (page 3) :

The Birnbaum Report acknowledges that there are forms of competition other than price competition, such as competition based on product quality or service. This is true; title insurers do not approach claims handling the same way and this is an element of competition between companies. However, after making this point, the Birnbaum Report proceeds to limit the consideration of competition for its analysis to price competition only. There appears to be no justification for this decision, especially since the other elements of competition are integral components of the decision as to whether a rate is excessive or not. Thus, if one company has better service, it needs more or better staff to provide that extra level of service. If a company spends more on employees to search and examine title to eliminate claims and, thus, better protect its insureds, it needs more funds to do so. These elements of competition directly relate

to the expenses of a company and the analysis as to whether those rates are reasonable. It is entirely reasonable that people should pay more for better service and better claims prevention.

Response to Comment:

The Commissioner rejects this comment. Insurance Code section 12401.3 makes a finding of absence of a reasonable degree of competition a precondition for finding rates to be excessive. Because the Legislature has conditioned rate-regulation on the finding of an absence of competition, it is reasonable to conclude that it was price-competition that the Legislature was looking for. Stated differently, section 12401.3 evinces a policy to provide rate-regulation when competition cannot be relied upon to keep rates reasonable. That is the condition the Commissioner has found to prevail. It is not surprising that companies may compete on bases other than price, but that competition is not directed to consumers and, the Commissioner has found, does not benefit consumers but rather other businesses that steer consumers to the title or escrow company – businesses that are, revealingly, referred to in the industry as the “customers.”

Summary of Comment (page 3):

Where the Birnbaum report looks at competition, its conclusion that there is no rate competition is incorrect. An example is at p.22, which examines escrow rates. The chart shows a huge range of prices among the companies listed, in some cases differing by more than 50%. A similar situation pertains to the prices for title insurance products as documented by Dr. Lipshutz. Dr. Lipshutz’ analysis shows that the actual range of rates for owner’s policies in the market runs from 16% above the average rate to 8% below. For lenders’ policies, the difference is even more dramatic, from 13% above the average to 21% below the average. Lipshutz Preliminary Study at p. 4. These uncontradicted facts demonstrate that there is a broad range of rates to choose from.

Response to Comment:

The Commissioner rejects this comment. The Commissioner responds to the cited comments elsewhere in this file. The Commissioner has found the evidence cited in the Competition Report persuasive in demonstrating that what variability may exist in filed rates is insufficient to provide a reasonable degree of competition.

Summary of Comment (pages 3-4):

The discussion of reverse competition and barriers to entry into the market place show that the Birnbaum Report conclusions are theoretical, rather than factual. As for “reverse competition,” whereby marketing is done to distributors, rather than end consumers, there are many such examples of similar marketing of other products or services, such as surgeons who market their services to doctors, who then refer patients to them. The Birnbaum report did not compare actual costs of marketing title insurance to realtors and lenders to the costs of marketing directly to consumers who do not have the expertise or understanding of the product that the real estate professionals have: marketing directly to consumers might be more expensive. Nor does the report take into account the large number of companies that do not give kickbacks. Instead, the

report seems to assume that every company is engaged in kickbacks in order to obtain a significant amount of business. This is demonstrably untrue.

Response to Comment:

The Commissioner rejects this comment. The existence of marketing practices in other industries is irrelevant to the finding that there is not a reasonable degree of competition in the title and escrow markets. Indeed, the commenter has not proffered any evidence that there is price-competition in the medical markets to which the commenter alludes. Neither the Competition Report nor the proposed regulations claim title and escrow companies should (or even could) market directly to consumers. On the contrary, the nature of these markets and products is such that direct marketing may not be feasible or beneficial to consumers; that fact militates more strongly in favor of adoption of the proposed regulations to enforce prices that would obtain in a competitive market that may not be feasible. The commenter is incorrect in assuming that the Competition Report assumes that every company is engaged in illegal conduct; the Report merely concludes that companies are not competing for business on the basis of the price paid by consumers; other forms of competition – legal or illegal – do not provide pricing discipline a competitive market would provide.

Summary of Comment (page 4):

With regard to barrier to entry into the title insurance marketplace, the Birnbaum report fails to mention the scores of underwritten title companies and escrow companies that entered the marketplace in the past several years. See Lipshutz at pp. 7-8. The ease of entry belies the report's implication that it is difficult to get into the industry and that competition does not exist. Stating that the lack of established business relationships is a barrier to entry fails to consider that every new company in every field is an unknown and must market itself or hire others with established relationships in order to find customers. There is no difference between title insurance, escrow and any other product or service in this regard.

Response to Comment:

The Commissioner rejects this comment. The Commissioner responds to the cited comments elsewhere in this file. Neither those cited comments nor this comment proffer any evidence of significant entries into the market by independent entities that can be expected to introduce price-competition. On the contrary, the evidence is that the so-called new entrants are in fact existing firms cementing or creating new controlled business arrangements. Such arrangements may exist in other markets, but that does not refute the fact that they impede competition in this market.

Summary of Comment (page 4):

The proposed regulations seek to impose a maximum rate for title insurance and escrow services. Yet, Insurance Code Section 12401 states that “[i]t is the express intent of this article to permit and encourage competition between persons or entities engaged in the business of title insurance on a sound financial basis, and nothing in this article is intended to give the commissioner power

to fix or determine a rate level by classification or otherwise.” The Commissioner’s proposal makes no attempt to determine whether the interim rate proposed is inadequate or will provide a “sound financial basis” for the conduct of the title insurance industry. Moreover, the setting of a maximum rate only discourages price competition, at a time when there is a great deal of variance in prices between insurers. Finally, the setting of a maximum rate is in direct violation of Section 12401, which expressly states that the commissioner has no such power.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations do not “fix” or “determine” rate levels. They define the level above which the rate is excessive. Companies are free to compete by charging any rate they wish so long as the rate is not “excessive.” (Ins. Code § 12401.3.) It has long been understood that the code authorizes the Commissioner to prohibit excessive rates and that doing so does not constitute the proscribed fixing or determination of rates. The words “fix or determine” describe regulatory regimes where the regulator specifies the rate that must be charged, as is done in several states. The proposed regulations specify a maximum and permit companies to charge any rate that does not exceed the maximum. That preserves both “competitive rating” and, to the extent it otherwise exists, a “free market.” The regulations merely limit competition within the range of rates that are not excessive. The Commissioner also rejects the comment insofar as it asserts the proposed regulations do not seek to determine whether rates will provide a “sound financial basis”; the maxima established by the proposed regulations are explicitly constructed on the reasonable cost for providing the product or service plus a reasonable profit. The Commissioner rejects the comment that there exists competition that would be impaired by the proposed regulations; as the Competition Report demonstrates, there is no such competition in the current market and the proposed regulations fully permit competition in non-excessive prices. Finally, the Commissioner rejects the commenter’s interpretation of Insurance Code section 12401, which does not, as the commenter asserts, make any reference to determining what the excessive rate is; on the contrary, the section expressly states the policy of not permitting rates to be excessive.

Summary of Comment (page 4):

The Commissioner wishes to gather data pursuant to a statistical plan to analyze industry profitability and to adjust the maximum cost of title insurance in the future. Such data is supposed to be used “in reviewing and evaluating individual rate filings by title insurers pursuant to the standards set forth in Section 12401.3.” Insurance Code Section 12401.5(d). It may not be used for the purposes proposed by the Commissioner. Section 12401.5(d) provides “[h]owever, no statistical plan or modifications thereto, or rules or regulations pertaining thereto, shall do any of the following: . . . 2) conflict with the purpose and express intent of Section 12401; 3) fix, determine, or in any way impair competitive rating or the free market.” The proposal seeks to use such data in a manner directly in conflict with both 12401.5 and 12401 and, therefore, is not permissible.

Response to Comment:

The Commissioner rejects this comment. The commenter's errors with respect to the prohibition on fixing and determining rates and the provisions of Insurance Code section 12401 are addressed in the immediately preceding response. Therefore the comment's objection to the collection of data under the statistical plan enacted pursuant to Insurance Code section 12401.5 is without merit.

Summary of Comment (pages 3-4):

Collection of non-financial data exceeds statutory authority. Section 12401.5 provides the Commissioner authority to prescribe by "reasonable rules and regulations: (a) annual reporting of financial data . . . for the purpose of determining the industry financial experience for the reporting year." The statute goes on to identify "the after-tax rate of return on total capital, including investment income and realized and unrealized capital gains," as types of information the Commissioner is authorized to request. The consistent use of the modifier "financial," coupled with the enumerated categories of information listed by way of illustration here, evince a strong legislative intent that the information the Commissioner may lawfully collect, pursuant to a statistical plan, relates only to financial performance. It does not appear the Legislature intended to grant the Insurance Commissioner the authority to engage in far-ranging inquiries to investigate the areas which the proposed regulations delve into, e.g., information as to the role a title company fulfilled for each party to the transaction, the source of the business transaction and detailed information about personnel.

Response to Comment:

The Commissioner rejects this comment. All of the data to be collected under the proposed regulations pertain to the financial performance of the regulated companies. That includes the functions and services for which the company was paid, the cost of which functions and services determine whether and how much profit the company realized. The commenter has failed to identify any data element in the statistical plan that is not relevant to the regulated companies' financial results.

Summary of Comment (page 5):

Proposition 103 is unavailing to the Commissioner as authority for the data submission regulations. Proposition 103 on its face excluded title insurance from its purview. Further, there are several noteworthy differences between Proposition 103 and the statutes governing title insurance that are significant with respect to rate-setting and data requested of title companies by the Commissioner. Proposition 103 arose as part of California's initiative and referendum system and was a mandate from the electorate. This is unilateral action by the Commissioner that conflicts with specific statutory provisions (cited earlier). The intent of Proposition 103 was to "do away with open competition by means of a rate rollback and a system of prior approval." (No citation provided.) The title insurance statutes at issue prohibit regulatory barriers to the free market. Section 12401.5 specifically states that the Commissioner has no authority to fix, determine, or impair competitive rating or the free market.

Further, under Proposition 103, all rates must be approved by the Commissioner before filing. On the other hand, title insurers may file rates and use them 30 days after filing, strengthening the argument that the insurance commissioner has no legal authority for the data-reporting requirements for rate-setting purposes over and above the purely financial data authorized in Section 12401.5.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations are being adopted pursuant to the Commissioner's explicit authority to adopt such rules and regulations to regulate the title business, including the authority conferred by Insurance Code section 12401.5. The commenter is in error in inferring the Commissioner has relied upon Proposition 103 for such authority. The commenter is also in error in implying that the Commissioner may not prohibit the charging of excessive rates. The comment is also in error in its reference to the file-and-use system of regulation, which the proposed regulations do not alter and upon which they have been constructed.

Summary of Comment (page 5):

The proposed regulations' adverse economic impact was not adequately assessed. Administrative agencies in California cannot undertake administrative action unless the authority is either explicitly or implicitly permitted by the California Constitution or specific enabling statutes. Section 11346.3 of the Government Code provides that State agencies proposing to adopt an administrative regulation shall assess the potential for adverse economic impact and shall assess whether and the extent to which the regulation will affect the creation or elimination of jobs within the State of California, the creation of new businesses or the elimination of existing businesses within the State and the expansion of business currently doing business in the State of California.

Section 12401.5(b) suggests that the Commissioner, when promulgating a statistical plan for the submission of financial data, give "due consideration to the systems in use and, in order that the plan may be as uniform as is practicable among the several states, to the rules and the form of the plan used for these rating systems in other states."

The proposed regulations would impose an unreasonable and unnecessary economic impact on Old Republic with no or minimal benefit to the California Department of Insurance or Old Republic's insureds. The proposed regulation provides for the creation of new and burdensome data collection and recordkeeping requirement, but gives no indication that any effort was made to assess the cost or other impacts of these obligations or compare their form to what is required in other states.

Old Republic has independently analyzed the economic impact of the data collection and recordkeeping provisions. The analysis concludes that the proposed changes would be unduly burdensome in terms of employee time and costs involved in making these changes. The analyses for some specific proposals are attached as Exhibit C.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations have been expressly authorized by statute, including Insurance Code section 12401.5. The Commissioner has considered the economic effects of the proposed regulations and determined that they would have a favorable effect on the state's economy by removing excessive and unnecessary consumer charges from the real estate market and thereby stimulating consumer spending and job-creation. The Commenter has not proffered any evidence to show any adverse effect on the ability of California businesses to compete, and none is apparent in this industry, in which any company, no matter where it is based, will be required to comply with the same rules.

The Commissioner has given due considerations to existing data systems in use in California and elsewhere and has found them not to be adequate to permit the determination of whether a rate is excessive.

The Commissioner rejects the comment that the data-collection burden is unnecessary. The eradication of excessive rates is an important task that will benefit the customers of every company that would otherwise charge excessive rates.

The Commissioner responds separately in this file to Exhibit C.

Summary of Comment (Bates pages 1476-1518):

A report prepared by Bruce Stangle and Bruce Strombom is attached at Bates pages 1476-1498; A Preliminary Study prepared by Nelson Lipshutz is at Bates pages 1499-1515; Exhibit C (Analyses of Data Collection Proposal) is at Bates pages 1516-1518.

Response to Comment:

The Commissioner responds elsewhere in this file to the three proffered exhibits (See Volume 1, Summary and Response to Comments of American Guaranty Title Insurance Company).

Commentator: Patricia A. Laffin on behalf of Placer Title Company**Date of Comment:** Received 8/25/06**Type of Comment:** Written**Volume 4, Comment No. 1585-1630:****Commentator:** Patricia A. Laffin, on behalf of Placer Title Company**Date of Comment:** Received 8/25/06**Type of Comment:** Written**Summary of Comment (page 1-2):**

This passage summarizes the commenter's general objections to the proposed regulations, provides a description of the commenter's company and general business experience in California as well as the commenter's support for the comments submitted by the California Land Title Association, among other licensees.

Response to Comment:

This portion of the comment is not specifically directed at the Commissioner's proposed regulations or to the procedures followed in proposing the regulations. Additionally, this portion of the comment reflects summaries of comments that are summarized and responded to in greater detail below. No response is, therefore, necessary. (Gov. Code section 11346.9.)

Summary of Comment (page 2-3):

The Commissioner's authority is limited to an individual evaluation of the merits of each company's rates. The proposed regulations' attempt to create statewide rates applicable to all companies is not consistent with the individual rate review approach set forth in Insurance Code sections 12401 and those sections that follow.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations permit and expect each company to charge its own rate, which does not necessarily equal the rate of any other company, so long as that rate is not excessive. The proposed regulations provide for individualized hearings on any rate that may be held to be excessive. Insurance Code section 12401.5 expressly contemplates the Commissioner adopting regulations in furtherance of this authority.

Summary of Comment (page 3):

Insurance Code section 12401 states that "nothing in this article is intended to give the Commissioner the power to fix and determine a rate level by classification or otherwise." Similarly, although Insurance Code section 12401.5 permits the Commissioner to obtain financial data regarding the business of title insurance, the Commissioner is specifically prohibited from using a statistical plan as a means to certain ends. Specifically, section 12401.5 prohibits the Commissioner from using a statistical plan as the basis for an assessment not otherwise authorized by law, in a manner which conflicts with the intent of section 12401, or to fix, determine or in any way impair competitive rating or the free market. The proposed regulations set rates and therefore are in direct conflict with this statutory prohibition. The interim rate reductions are particularly in conflict because they set rates without any analysis or justifications other than the assumptions that the Department staff made based upon raw data.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations do not "fix" or "determine" rate levels. They define the level above which the rate is excessive. Companies are free to compete by charging any rate they wish so long as the rate is not "excessive." (Ins. Code § 12401.3.) It has long been understood that the code authorizes the Commissioner to prohibit

excessive rates and that doing so does not constitute the proscribed fixing or determination of rates. The words “fix or determine” describe regulatory regimes where the regulator specifies the rate that must be charged, as is done in several states. The proposed regulations specify a maximum and permit companies to charge any rate that does not exceed the maximum. That preserves both “competitive rating” and, to the extent it otherwise exists, a “free market.” The regulations merely limit competition within the range of rates that are not excessive.

Summary of Comment (page 3-4):

The Competition Report contains several flaws in its analysis. The Report fails to compare California pricing with that of other states. Additionally, the Report neglects the filed reduced price programs which came into existence since 2000. While the Report concludes that “reverse competition” causes excessive rates, it does not attribute any numbers to the contention that illegal rebates inflate the cost of title insurance. Thus, the finding that rates are excessive and the regulations’ proposal to roll back rates to an arbitrary date lacks support and leads to the conclusion that the Report is flawed, inaccurate and incomplete. The commenter also joins in the comments of the California Land Title Association and economists who have evaluated the Competition Report.

Response to Comment

The Commissioner rejects this comment. The Competition Report does, indeed, compare California pricing to that of other states, finding California rates to be generally higher. There is no requirement that the Commissioner attribute “reverse competition” to any specific company; reverse competition is a market condition. Nor is there any requirement that the Commissioner identify the numerical impact of reverse competition on rates. The Commissioner responds elsewhere in this file to the comments of the California Land Title Association and to the attachments to those comments.

Summary of Comment (page 4)

If companies are forced to comply with the interim rate reductions, massive layoffs in the title and escrow industry will most likely result. These layoffs will affect the membership of the California Escrow Association, which is predominately made up of female household breadwinners.

Response to Comment

The Commissioner rejects this comment. The commenter has proffered no evidence of massive layoffs, and the Commissioner doubts the claim that the industry cannot avoid charging excessive rates without such layoffs. If, however, elimination of excessive rates requires lower employment levels, that is the statutorily prescribed result, regardless of the gender of affected employees. Overall, the Commissioner expects the elimination of excessive rates to increase the amounts California families have to spend on housing and other necessities, stimulating employment in allied industries.

Summary of Comment (page 4):

Both the California Escrow Association and the commenter reject the conclusion that competition within the escrow industry is permeated by reverse competition and the illegal payment of kickbacks, rather than efficient and friendly service.

Response to Comment:

The Commissioner rejects this comment. The commenter has provided no evidentiary support for this claim and no valid basis for rejecting the substantial evidence on which the Competition Report is based.

Summary of Comment (page 4):

The proposed regulations are extremely burdensome, in that the statistical plan requires the reporting of every transaction, the overhead and direct costs associated with each transaction as well as the parties involved in each transaction. The costs associated with these reporting requirements will drive small companies out of business, while at the same time, providing more information to the Commissioner than his staff will be able to assimilate. Because consumers and taxpayers will be victims of the regulations, the proposed regulations are not in the public interest. The commenter supports the comments of the California Land Title Association, concerning the burden that these regulations would impose. The commissioner rejects the comment that small companies will be driven out of the business; the proposed regulations as amended contain an exemption for unaffiliated small companies until the necessary software or services are commercially available.

Response to Comment:

The Commissioner rejects this comment. The Commissioner acknowledges that the statistical plan requires extensive data, which is a burden to regulated companies, but not an undue burden. On the contrary, the Commissioner has found that the requirements are reasonably necessary for implementation of the proposed regulations. The reporting of data on a transaction level should not be particularly difficult because the companies already capture that data in the course of providing their services and would require the data to report even summary statistics. The commenter is incorrect that the proposed regulations require reporting overhead at the transaction level.

Summary of Comment (page 5):

While the commenter does not intend to evaluate or comment on the details of the methodology behind the interim and permanent rates, the commenter supports and concurs in the comments filed by others on these issues, such as the comments filed by the California Land Title Association.

Response to Comment:

The Commissioner responds to the comments of others elsewhere in this file.

Summary of Comment (page 5-6):

The Commissioner's determination that rates are excessive and warrant immediate rate reductions is wrong. The interim rates proposed by the regulations will result in inadequate and unfairly discriminatory rates. The title insurance and underwritten title industry, in the last five years, has experienced record profits that are not characteristic of the general market trend. The Department's regulations attempt to equate the record profits, during a period of unparalleled business volume, to rates which are excessive in a normal market. Because the volume of transactions in the California market has dropped significantly over the last 10 to 12 months, companies are already faced with the need to downsize and consolidate offices in order to reduce costs. Even without the rate reductions proposed by the regulations, few if any companies have returned to profitability in the current market. The proposed regulations will only exacerbate the downsizing and consolidation efforts that have been observed in the current market.

Response to Comment:

The Commissioner rejects this comment. The basis for the interim rate reductions – the sharp rise in prices far in excess of any increase in reasonable costs, largely attributable to housing inflation – is well-documented. The commenter offers no evidence that the resulting rates will be excessive, inadequate, or unfairly discriminatory. The interim rates do not recapture the increased profits attributable to the recent high business volume, only those attributable to the high housing prices, and the proposed regulations contain provisions for maximum rates to rise if those high housing prices fall in the next three years. The Commissioner rejects the assertion that observed market consolidation has been driven by declining profitability; the evidence indicates that much of that consolidation has been to build controlled business arrangements by which those with market power may exploit that power.

Summary of Comment (page 6):

If the interim rate reductions take effect, the commenter predicts that small and mid-sized underwritten title companies will be forced to sell their businesses to the larger insurance companies or go out of business entirely. Other mid-sized title insurers, rather than operate at a substantial loss for a significant period of time, may elect to withdraw from the California market. Thus, competition will be reduced rather than enhanced. By the time that the remaining few insurers convince the Department that rates are inadequate under the new regulations, the Department will have accomplished nothing other than the reduction of competition and removal of smaller title and underwritten title companies from the state.

Response to Comment:

The Commissioner rejects this comment. The commenter has offered no evidence to support the proffered prognostications. The proposed regulations are intended to reduce rates to those that would prevail in a competitive market. If a competitive market would not support the number of companies that currently exist – itself an unsupported assertion – then it is not the job of the

Department to support a different market structure. The Commissioner rejects the assertion that the Department will, in the future, approve excessive rates; the Department may be expected to do its job in the future.

Summary of Comment (page 6-7):

The rationale set forth by the Commissioner for the interim rate reductions and the regulations as a whole is erroneous. The Commissioner assumes that the costs he designates as fixed costs move up or down with broader cost trends like the Consumer Price Index. A review of the existing circumstances for the title insurance market demonstrates that application of the Consumer Price Index is simply inaccurate and that gains in productivity come at a cost.

Response to Comment:

The Commissioner rejects this comment. The commenter has proffered no evidence to support this comment. It may be that actual costs have risen faster than CPI inflation – for example, that companies are expending more on reverse competition as the business becomes increasingly profitable and those who steer the business demand increasing consideration for referrals – but the commenter has not shown that reasonable costs – the only costs that companies are entitled to recover in rates – have risen any faster than the CPI. Indeed, given the vast automation of office functions in recent years, there is every reason to expect costs to have risen more slowly than inflation and that the assumption of CPI inflation is conservative in the companies' favor.

Summary of Comment (page 7):

The rationale set forth by the Commissioner for the interim rate reductions and the regulations as a whole is erroneous. The fact that the July 2006 Staff Report on interim rates selected the year 2000 as the base year, while unclear, appears to have been solely due to the fact that it is proximate in time to the extraordinarily high real estate market gains in subsequent years. The reason for selecting the year 2000 as the base year is, therefore, unsubstantiated.

Response to Comment:

The Commissioner rejects this comment. The year 2000 was, indeed, the beginning of the sharp increase in real estate prices, but that does not make it inappropriate. On the contrary, the interim rates are intended to offset the improper effects of that increase on title and escrow pricing, so the selection of 2000 is wholly appropriate.

Summary of Comment (page 7):

According to the July 2006 Staff Report, while acknowledging that variable costs cannot be estimated with precision due to the lack of necessary data, variable costs are assumed to be proportional to the value of the home. The Report then assigns a reasonable range of 20% as the increase in variable costs. The Staff Report concludes that a rollback from the 2000 base rate of 23% is warranted for purchases and 16% for refinancings. The ranges chosen by the staff are unrealistic and unfounded.

Response to Comment:

The Commissioner rejects this comment. Variable costs are not assumed to rise and fall with home value, they definitionally do so. The Staff Report states the basis for the 20% assumption. The reduction percentages have changed with the amended proposed regulations and are no longer the numbers cited by the commenter.

Summary of Comment (page 7):

After admitting that the calculation of escrow transactions is considerably more complex, the Staff Report notes that a random sample of 400 out of over 1,000,000 transactions was used to impose a rate reduction of 27% for sale escrows. The escrow rate reduction is imposed as a statewide rate reduction, despite the fact that escrow rates can differ even within a county, and are filed on a county or group of county basis. The escrow rate reduction is, therefore, unrealistic and unfounded.

Response to Comment:

The Commissioner rejects this comment. The calculations have been revised, and regional variations in escrow charges are now provided for. The statement regarding a sample of 400 was incorrect and is now irrelevant given the revised calculations, which are based on 100% of the transactions during the two periods.

Summary of Comment (page 7-8):

The latest market cycle is likely unparalleled in our history. Never in the history of the commenter's company has there been a time of sustained low rates coupled with housing booms. The increase in business volume was an invitation to title insurers and underwritten title companies to expand into new markets. This expansion resulted in an increase in competitive pressures such as the pressure to procure and retain qualified personnel. These employee costs, including signing and retention bonuses, as well as double and sometimes triple-digit increases in salaries and other fringe benefits, far outpaced the Consumer Price Index. By way of example, the commenter's top 100 escrow personnel saw an average increase in base salaries of 8 percent per annum. While the housing boom has slowed, the increased salaries and compensation packages remain.

Response to Comment:

The Commissioner rejects this comment. The interim-rate calculations do not take into account the increased volume since 2000, so the assertion that it was unusual is irrelevant. To the extent housing prices decline from current levels, the amended interim-rate sections will take that decline into account and result in higher permitted charges. To the extent escrow companies have experienced higher costs as parties to transactions recognize how profitable they have become and exact a share of the excess, those costs should be eliminated by the proposed

regulations. There is no reason why, if sales slow, companies cannot reduce personnel costs, as they would in a competitive market.

Summary of Comment (page 8-9):

The commenter's company has experienced more than 83 percent move from the peak in refinancing, while new home sales have reduced by 20 to 30 percent and continue to decline. Moreover, the price of homes is decreasing, according to figures from Dataquick Information Services, despite the assumption in the July 2006 Staff Report. Thus, substantially more competitors are competing for a smaller available volume of business, making office consolidations and foreclosures fiscally necessary. Even after closing an office, costs continue as the business must pay for the lease, sell furnishings at a loss, as well as the payment of severance payments and unemployment benefit contributions. None of these items are adequately considered in the Staff Report.

Response to Comment:

The Commissioner rejects this comment. The Commissioner's response to the previous comment – covering changes in prices and volume and existing cost structures for personnel services and other costs – are all responded to above. The Commissioner notes that the amended proposed regulations provide for implementation of the interim rates, if at all, only in 2009, giving companies ample time to adjust their costs to the regulatory maxima.

Summary of Comment (page 9):

The rate of home sale cancellations has more than doubled, and consequently the majority of activities related to escrow and title are performed in circumstances where no revenue will result due to the cancellations. Due to competitive constraints, the customary practice in the market is to waive cancellation fees for title or escrow, with limited exceptions. Thus, the cost of cancelled escrows must be recouped in the cost of escrows that do not cancel. This is not considered in the Commissioner's Staff Report.

Response to Comment:

The Commissioner rejects this comment. There is nothing that precludes companies from collecting their fees from those for whom they provide the services. If they choose not to, that is not the responsibility of consumers or the Commissioner. It is likely that the practice of not collecting for escrows that do not close has contributed to the high cancellation rate and has increased costs for consumers.

Summary of Comment (page 9-10):

Mortgage fraud and the number of transactions involving allegations of fraud have increased dramatically, and underwritten title companies have unlimited liability for escrow claims. This liability goes directly against an underwritten title company's bottom line. The attendant costs in

mounting a defense against such claims have tripled. Yet, this phenomenon is not accounted for in the proposed interim rate calculations.

Response to Comment:

The Commissioner rejects this comment. The cost of fraud-prevention and other aspects of underwriting, as well as losses and loss adjustment expenses, are collected in the statistical plan and are fully reflected in rates.

Summary of Comment (page 10):

While technology is a benefit and automation does improve efficiency, each element requires significant investment both upfront and ongoing investment to maintain that level of efficiency and automation. The commenter's technology department is a continued investment that includes new hardware, software as well as highly qualified and appropriately salaried personnel. Over the last five years the commenter's company has spent over \$18.5 million to maintain the level of automation that it currently enjoys. The Department's Staff Report, however, claims that it has accounted for the cost of automation by not performing a downward adjustment to the Consumer Price Index. This non-adjustment is woefully insufficient and simply does not account for the actual costs required for automation and technology. This is true not only for the commenter's company but also for other small underwritten title companies that lack the resources of the commenter and have invested in "off the shelf" accounting software in order to enhance automation and productivity.

Response to Comment:

The Commissioner rejects this comment. The cost of automation is, as the commenter acknowledges, an investment, to be capitalized, not expensed. The company invests in automation because the cost is less than the cost of not automating. The commenter does not relate the claimed five-year investment of \$18.5 million to its overall revenue and cost structure, but there is nothing in the comment to suggest that it is not an investment expected to pay off for the company.

Summary of Comment (page 11):

Over the past five years, demands on escrow have increased due to the increase in the number of transactions for both first and second deeds of trust as well as the number of payoffs on unsecured loans. Each requires a significant increase in the time required to complete escrows for these transactions. Despite the increase in resources and time necessary to complete these aspects of an escrow transaction, the revenue generated has not risen proportionately.

Response to Comment:

The commissioner rejects this comment. To the extent the comment is directed at the permanent rate-regulatory system, these costs will be collected in the statistical plan and will be fully reflected in the maximum rates. To the extent the comment is directed at the interim maxima

rates, the commenter has failed to proffer evidence that the costs to which the comment alludes have risen faster than revenue from increased home prices.

Summary of Comment (page 11):

The Staff Report also fails to account for the increase in costs that accompany licensees' efforts to comply with new laws, such as the proposed regulations. Since 2000, new laws have increased the duties of the commenter's company without any increase in revenue. Examples of such new laws include withholding requirements, privacy law notice requirements, electronic security and breach notification laws, terrorist act compliance, Sarbanes-Oxley requirements and employment laws. The Consumer Price Index and the Staff Report generally, fails to account for these types of costs.

Response to Comment:

The Commissioner rejects this comment. The commenter has not proffered evidence that the costs to which the comment alludes are significant compared to the increased revenues arising from sharply higher home prices and compared to the savings that have been achieved through automation. The CPI is a reasonable, widely-used metric for increased prices and has been used for comparable purposes. The maxima based on the statistical plan will, of course, fully reflect compliance costs.

Summary of Comment (page 12):

The interim-rate reductions in the proposed regulations proceed from the erroneous assumption that reducing rates by 23% for resales would be tantamount to rolling rates back to 2000 levels. The interim-rate reductions fail to consider the "short term rate" which is a 20% discount for properties that were subject to any title insurance during the preceding period of time (usually 5 years). The "short term rate" is a rate that is incorporated into every title insurance company filing in the state. There has been an increase in the number of resale transactions that qualified for the short term rate since at least 2002. This trend, however, is not addressed in the Staff Report. Thus, because more properties would now qualify for the discounted rates than in 2000, the interim-rate reduction is greater than intended by the Department.

Response to Comment:

The Commissioner rejects this comment. The commenter has proffered no evidence that the discount to which the 20% commenter alludes fully reflects the cost-savings to the company from the recent prior transaction (or, stated differently, that it costs 80% as much to write a title policy or perform an escrow on a property that underwent the same process a few months or years before as it costs for property that has not changed hands for decades). Thus, to the extent the number of transactions qualifying for short-term rates is higher than it was in 2000, it is unclear whether that decreases or increases costs per transaction more than it decreases revenue per transaction.

Summary of Comment (page 12):

Imposing interim-rate reductions in the manner proposed in the regulations would be unfair, discriminatory and anti-competitive. While the list of deficiencies in the Staff Report set forth in the comments above is not exhaustive, it demonstrates why proceeding with the regulations, if based upon these faulty assumptions, would have potentially deadly consequences. Small companies will be driven out of business while some larger companies with sufficient investment reserves will survive, thereby creating less competition in the market.

Response to Comment:

The Commissioner rejects this comment. The commenter has failed to proffer any basis for the assertion that rates complying with the interim maxima would be unfair, discriminatory, or anti-competitive, as noted in the responses above. The commenter has failed to show that there is a competitive market to be injured or that the proposed regulations would diminish whatever competition currently is claimed to exist. The effect on the number of companies will be no different than the effects of a competitive market would be on the number of companies.

Summary of Comment (page 12-13):

If the Commissioner were to apply the interim-rate reductions to the commenter's company during its most profitable year, which was 2003, the commenter's company would have made a meager 4% profit margin. This effect would be devastating if it were applied to a less profitable year, such as 2006. If the interim rates were applied to the commenter's operating results through the second quarter of 2006, the commenter's company would have a pre-tax operating loss of \$8,648,685. Even without the interim rate reductions, or the cost to comply with those regulations, the commenter's company has incurred over \$1,000,000 in operating losses. The commenter challenges the Department to apply the interim rate reductions to any underwritten title company in its most profitable year to see if the company would still be profitable. The commenter concludes that companies cannot be expected to survive under the proposed regulations in a market where refinances have slowed dramatically and sales of homes have plummeted.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations have been amended, so the commenter's calculations do not necessarily apply to the amended proposed regulations. More fundamentally, the Commissioner rejects the implicit assertion that all of the commenter's costs were reasonably incurred and that the commenter is entitled to recover them in rates. The commenter has also failed to take into account savings that accrue from lower revenues, such as lower commissions. Furthermore, the Commissioner has found that calculation of operating returns is misleading and inappropriate. The commenter has failed to demonstrate that it could not recover its reasonable costs under the proposed regulations.

Summary of Comment (page 13):

The proposed regulations and many of the conclusions reached in the Department's Initial Statement of Reasons demonstrate a lack of understanding as to the impact of the proposed regulations on independent underwritten title companies and the adverse consequences that will result from the proposed regulations. For small independent underwritten title companies, the impact of the proposed regulations will be to severely cripple the companies, put them out of business entirely or sell their companies to larger companies at a loss. Any underwritten title companies that can survive the interim rate cut will be dealt a final blow when the cost of the reporting requirements from the statistical plan takes hold.

Response to Comment:

The Commissioner rejects this comment. To the extent that the commenter's claims refer to arguments made above, they have been adequately responded to there. To the extent the commenter claims other, unspecified effects of the proposed regulations, the commenter has failed to identify and substantiate those effects. There is no question that UTCs will be required to report their data under the statistical plan and will be required to reduce any unreasonable costs. That is not a reason for the Commissioner not to adopt the proposed regulations.

Summary of Comment (page 14):

Unlike title insurers, underwritten title companies are not required by law to maintain statutory premium and claim reserves, and therefore do not have the benefit that this additional income provides to title insurers. While the business model for an insurance company is predicated on a significant return on investments to support income from operations, this is not the case for underwritten title companies, which must rely solely on the profitability of their title and escrow operations. This crucial difference between title insurers and underwritten title companies is not recognized in either the interim rate reduction methodology or the permanent rate reduction formula. As title rates are set by the underwriters, and underwritten title companies are bound by those rates, the rates must be established without the consideration of reserve income, and in a manner that permits underwritten title companies to operate profitably from their operations alone.

Response to Comment:

The Commissioner rejects this comment. Investment income is properly reflected in the single rate for title insurance. How the revenues collected under that rate are split between the underwriter and the UTC is a matter of negotiation between the two. The Commissioner rejects the suggestion that the UTC lacks bargaining power in those negotiations, noting that the typical 90% share for the UTC is higher than the average in the rest of the county. But whatever the nature of those negotiations, they are left to the parties by the statute. (See Ins. Code, § 12401.1.)

Summary of Comment (page 14-15):

Underwritten title companies, unlike the title insurers, are generally small regional companies which sometimes do not operate in more than one county. Small regional companies do not have

the luxury of offsetting losses in one region of the state or nation against the profits in other states, like the large underwriter often does. Moreover, while escrow operations in Southern California are profit centers, Northern California escrow fees are set to cover costs with profits derived primarily from the issuance of the title insurance. As the Commissioner has acknowledged that escrow fees in Southern California are twice that of Northern California, underwritten title companies that are located exclusively in Northern California will be disproportionately penalized by the interim-rate reductions due to their inability to offset those losses against higher rates in their Southern California operations.

Response to Comment:

The Commissioner rejects this comment. The commenter has provided no evidence that costs for providing UTC services vary significantly by region. The commenter does not appear to be claiming they do, but rather that multi-region UTCs are able to use profits in one region to subsidize losses or lower profits in other regions. Doing so would appear to be illegal unfair discrimination – with or without the proposed regulations. The proposed regulations permit rates that cover the reasonable cost of providing title insurance and a reasonable profit. That remains possible for the regional and the multi-region company alike.

Summary of Comment (page 15-16):

The cost of compliance with the proposed regulations' statistical plan reporting requirements would be astronomical and impossible to complete in the short timeframe proposed by the regulations. The commenter's company conducted a preliminary assessment of what would be needed to comply with the proposed regulations. The company would need 2 to 3 additional programmers for its escrow and title system and an outside service provider for its accounting system in order to comply with the reporting requirements. Just to locate the necessary personnel would take one to two months, and the accounting system may not be capable of conducting the report writing necessary to comply with the proposed regulations.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations have been amended to provide companies additional time to respond to the requirements of the statistical plan. The data required by the statistical plan represent data necessary to provide a full picture of the costs of service and the financial results of the company's operations. To the extent the requirements are a disproportionate burden on small independent companies, the proposed regulations have been amended to exempt those companies until appropriate software or services become commercially available.

Summary of Comment (page 16-17):

The statistical plan reporting requirements are in need of clarification in dozens of places and do not account for all of the costs that the commenter's company now incurs. As an example, UTC01.E requests that the company report "Other Services Not Provided," but the commenter has no idea what information is being requested in this field. Similarly, category UTC12

requires six years of prior data, but it is unclear as to whether this means that the commenter's company must go back to manually extract six years of data or whether the six-year period begins after the regulations' implementation period begins.

Response to Comment:

The Commissioner rejects this comment. To the extent amendments to the proposed regulations address the points the commenter makes, there is no longer any need to respond to the comment. The instructions for UTC01 clearly state, Report one of the following codes. Other services refer to services or products other than a preliminary report, title policy, full escrow or subescrow. 1. Other Services Provided 2. Other Services Not Provided. The instructions are clear that if a service other than a preliminary report, title policy, full escrow or subescrow is provided, the code 1 is reported, else the code 2 is reported. Similarly, the instructions for UTC12 are clear that six years of experience are reported and there are no instructions otherwise indicating that fewer years are reported initially.

Summary of Comment (page 17):

Once the commenter's company has received clarification from the Department regarding the meaning of some of the reporting requirements, the company will require a minimum of 3 months to perform the programming changes necessary to perform the data collecting and reporting function. From there, the data must be reported to the commenter's underwriters, because those underwriters will need the data in order to comply with their own reporting requirements. As the commenter's company reports to multiple underwriters, the commenter anticipates that data will have to be collected and reported to individual underwriters in different ways. Thus, the programming and beta testing of the programming is expected to take at least six months or more in addition to the time necessary to perform the initial programming changes.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations have been amended to provide additional time to respond to the requirements of the statistical plan, which should resolve the commenter's concerns.

Summary of Comment (page 17):

The data requested by the statistical plan will not fit into existing data fields collected. Therefore, new data fields would be required and would require companywide training in order to ensure a consistent and compliant method for tracking day-to-day activities. In addition, employees will have to keep time sheets, manually type in "explanations" of deviations as required by UTC 13.F and maintain registers to itemize and allocate certain charges.

Response to Comment:

The Commissioner rejects this comment. It is true that implementing the required data collection will require training of employees and that program modifications may be required. The

Commissioner does not find those requirements to be grounds not to adopt the proposed regulations.

Summary of Comment (page 17-18):

Although the proposed regulations require underwritten title companies to report personnel expenses based on the activity codes identified by the Department, the commenter's company's services do not fall into the discrete codes identified by the Department and there is substantial cross-over among the codes. Thus, detailed allocation sheets would be necessary to determine which personnel activities fall into particular Department codes. These sheets, in turn, would need to be manually entered into the accounting system – a task that will take at least one additional data entry employee.

Response to Comment:

The Commissioner rejects this comment. It is to be expected that compliance with the statistical plan will require additional reporting expenses. Whether the commenter has accurately related the costs to that firm is unclear, but even if it is, the requirements of the statistical plan have been calibrated to meet the data needs to assess the reasonableness of expenses without imposing undue burdens on reporting companies. The proposed regulations expressly authorize the company to “estimate the percentage of the worker's time in each of the categories and allocate the worker's personnel costs on the basis of the time percentages.”

Summary of Comment (page 18):

The proposed regulations require some expenses to be reported based upon whether the service provide was related to title, escrow or customer service. With respect to the requirement for breaking out courier fees, it is unclear, for example, how the data should be reported when both title and escrow documents are included in the same package. Additionally, it is unclear whether minute-by-minute time sheets should be maintained in order to account for the job functions that the personnel perform each day.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations require reasonable estimates and allocations where timesheet recordation would not be warranted. Where a courier's services apply to both title and escrow, a reasonable, consistent method of allocation (equal division, allocation in proportion to fees or in proportion to number of escrow versus title documents, or some other reasonable method) would be used.

Summary of Comment (page 18):

UTC03.52, which requires reporting of facility rent for title insurance, is unclear. As the commenter's company also performs escrow services, it is unclear whether the commenter should account for each phone call that relates to escrow versus title in order to allocate rent. Similarly, it is unclear how time spent on administration or customer service should be allocated.

If data must be collected in this level of detail, approximately 33% of staff time will be spent complying with the reporting requirements. Such a detailed level of reporting, if it is what the Department intends, would not be rational.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations expressly authorize the company to “estimate the percentage of the worker’s time in each of the categories and allocate the worker’s personnel costs on the basis of the time percentages.” Specifically with respect to administrative and supervisory time, the proposed regulations instruct: “Please assign administrative and other support workers to the category or categories for which the workers provide the support.” However, customer service time should be reported as such and should not be categorized as anything else, as provided in the proposed regulations.

Summary of Comment (page 18):

Because some of the data reporting fields required by the proposed regulations require manual entry, tens of thousands of transactions will have to be reviewed to determine, for example, whether “unusual charges” have been made in accordance with UTC13.G, or to provide a description of activity reported under UTC07.F. Such reporting will require full time staff simply for reporting purposes.

Response to Comment:

The Commissioner rejects this comment. The assertion that tens of transactions will have to be manually reviewed is unsubstantiated and apocryphal. The “unusual charges” category is explicitly a residual category, such that there should be a relatively small number of potential transactions to be considered. The detail and comprehensiveness of the statistical plan (to which the commenter also objects) ensures that nearly all categories of expenses reasonably encountered in the operation of a UTC have been specified and are to be appropriately reported.

Summary of Comment (page 19):

The proposed statistical plan reporting requirements ask for “countrywide” data. As it is unclear whether the Department means nationally, this is another point for clarification. Moreover, if the Department is asking for the reporting of income from other states, the commenter questions whether the Department possesses jurisdiction to report other states’ income. Similarly, if a company has affiliates in other states, it is unclear whether those affiliates’ data must also be reported. Because the commenter does not maintain records in the fashion requested by the Department, it is possible that the Department does not understand the magnitude of the cost of reporting for the data it seeks.

Response to Comment:

The Commissioner rejects this comment. The term “countrywide” is widely used (in all states), and countrywide data (meaning data in all and any of the 50 states in which the firm operates) is

regularly and reasonably required by California and other states in virtually all lines of insurance. If the reporting company has income in other states, that income must be reported; the Commissioner is fully justified in requiring that data, which can be used to perform allocations of countrywide expenses to the reporting company's California business. An affiliated company that does not transact business in California is not required to file a report, but a reporting company must report the specified information about its affiliated businesses.

Summary of Comment (page 19):

This comment should not be construed as an attempt to list all of the deficiencies or issues involved in the reporting obligations, or the time and expense that will be necessary in order to comply. The commenter is confident that it would take more than a year to report the data sought by the Department and that the costs will run in the seven figure-range for implementing these data collection processes.

Response to Comment:

The Commissioner rejects this comment. To the extent the commenter has objections it has not made, no response is required. The proposed regulations have been amended to provide additional time for the first reporting. The Commissioner has determined that the costs of compliance are reasonable and necessary.

Summary of Comment (page 19-20):

The commenter's company is one of the more capable independent underwritten title companies, due to the parent company's investment in technology. Smaller underwritten title companies, which have minimal technology resources to begin with, however, will bear costs far beyond their financial and technical capabilities. This cost will not vary dramatically between large title insurance companies and small underwritten title companies, but smaller companies will have fewer transactions over which they can spread the cost of compliance. Thus, it will be an impossible burden for small and mid-size underwritten title companies.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations have been amended to provide an exemption for small independent companies until services and software become commercially available. The Commissioner has considered the characteristics of companies that should be eligible for this special treatment and determined that other companies properly do not qualify for the exemption.

Summary of Comment (page 20-21):

The assertion in the proposed regulations that an underwritten title company can treat a preliminary report as a separately priced component is erroneous. Insurance Code section 12340.11 specifically provides that a preliminary report is not an abstract of title and imposes no liability on the issuer. Thus, a preliminary report is not a report on the status of title, but rather,

is merely the first step towards the issuance of title insurance. Insurance Code section 12401.1, which provides that “there shall be no separate filing by an underwritten title company”, supports the idea that the cost for the search and examination of title, which is the prerequisite for issuing title insurance, is not a charge for which a separate assessment can be made.

Response to Comment:

The Commissioner rejects this comment. Insurance Code section 12404.1 expressly provides: “The furnishing of a preliminary report by any title insurer, controlled escrow company or underwritten title company, without charge to any person, shall constitute a violation of Section 12404.” While section 12404.1 goes on to allow companies to waive the fee for a preliminary report under specified circumstances, it is clear that this is a voluntary waiver by the company and not an entitlement.

Summary of Comment (page 21):

The assertion that title insurers and underwritten title companies facilitate and profit from preliminary report transactions, as that term is defined in proposed regulation section 2253.3(r), is erroneous. The Commissioner does not seem to recognize that a preliminary report is not a report showing the status of title to a particular piece of property and that title companies are not in the business of selling these reports. Although the proposed regulations contain an item entitled a “preliminary report transaction,” underwritten title companies do not engage in the sale of preliminary reports because it is a distinct product that is only issued in response to an application for title insurance.

Response to Comment:

The Commissioner rejects this comment. The preliminary report is, indeed, a transaction that the company is generally required to charge for pursuant to Insurance Code section 12404.1.

Summary of Comment (page 21-22):

The proposed regulations appear to confuse a cancellation fee with a preliminary report charge. The Commissioner erroneously assumes in Section 2357.7 that in all instances, both closed and cancelled escrows, “the party ordering the report will typically be charged” for the preliminary report. When an escrow cancels after a preliminary report has issued, a company may choose to charge a cancellation fee. The law, however, also permits an underwritten title company to waive the cancellation fee if the escrow is cancelled due to the failure of the parties to consummate a bona fide sale, loan or exchange or due to the title company’s refusal to insure the subject property. Thus, cancellation fees are often waived so that parties in real estate transactions can perform their due diligence without incurring additional charges from title companies. This, in turn, stimulates the real estate market and provides value to Californians. The commenter, due to competitive pressures, often chooses to waive the cancellation fee. Because the proposed regulations appear to assume that such a fee is collected in such cases, the regulations are based on a mistaken assumption.

Response to Comment:

The Commissioner rejects this comment. The term “cancellation fee” does not appear in the relevant chapter of the Insurance Code. The purported quotation from section 2357.7 is also false – the quoted phrase appears nowhere in the cited section. The commenter concedes that the non-collection is a waiver, which reflects its wholly voluntary nature. The Commissioner rejects the suggestion that the market is well-served by parties to the real estate transaction not having to pay for services they order. If parties know they will have to pay for those services, they will order them only when the service is warranted. Thus, the proposed regulation are based not on the assumption that UTCs collect for every preliminary report they issue but that they should not be subsidized by consumers for waiving fees to which they are legally entitled.

Summary of Comment (page 22):

The commenter’s cancellation rate varies as a function of market conditions, such that cancellation rates are higher in periods of fewer transactions and vice-versa. When an escrow does not close, the commenter’s company may have issued preliminary reports, accepted deposits, ordered demands and produced escrow instructions without getting paid for those efforts. The proposed regulations do not address the negative effect that such cancellations have on the income and productivity of companies like that of the commenter.

Response to Comment:

The Commissioner rejects this comment. The proposed regulations do not address the assertedly negative effects of waiving preliminary report charges because they proposed regulations assume the company will not waive those charges. If companies nevertheless do so, any negative effects are the responsibility of the company, not of the proposed regulations.

Summary of Comment (page 22-23):

The proposed interim and permanent rate reductions are inappropriate for specific regional and local markets because the rate reductions are based on statewide averages. Escrow rates and costs as well as property appreciation rates vary from county to county. These disparities in escrow charges and property values are evident from the Department’s own July 2006 Staff Report. The proposed regulations, however, mandate a statewide rollback of rates, without considering the effect on businesses in different counties. The regulations should regulate each company’s costs and profit level independently, because this is what the current statutory scheme contemplates

Response to Comment:

The Commissioner rejects this comment. The proposed regulations have been amended to provide for regional variations in escrow markets. While the Commissioner expects that each company’s rates will be selected by the company with consideration of the conditions of the local markets in which it operates, the Commissioner has found that the proposed regulations properly calculate the maximum rate for escrow, taking regional variations into account.

Summary of Comment (page 24):

Statewide regulation is inappropriate because the differences in the cost of doing business vary across the state for a number of reasons. While some counties are rural without the aid of many electronic title plants, other counties possess much better automation systems for records. Similarly, the costs to lease office space or compensate employees for greater commute distances differ by region. Thus, under the proposed regulations, companies that operate in more expensive markets will unfairly suffer more than companies that operate in regions with lower fixed costs. The result will be less competition as some companies will be unable to stay in business. If the proposed regulations are an attempt to turn title and escrow rates into “cost plus fixed fee” then the only way this can be done fairly is on an individual basis.

Response to Comment:

The Commissioner rejects this comment. The industry itself has long charged statewide rates for title insurance, refuting the claim that regional variations must be reflected in rates. The Department has found that regional variations in costs tend to mirror variations in revenue; unit costs tend to be somewhat higher in those places where real estate itself is more expensive and thus transactions yield greater revenue, covering those higher expenses.

Summary of Comment (page 24-25):

Northern California and Southern California escrow practices are very different and result in charges for Northern California that are half of those in Southern California. In Southern California the majority of escrows are handled by independent escrow companies, and the title products are handled by the title licensees. By comparison, in Northern California, the majority of escrows are handled by title insurance companies and underwritten title companies. Northern California companies, by comparison, have higher overhead and operating costs due to the multiple branch operations for providing escrow services. It will be difficult for Northern California companies to quickly reduce overhead in response to the market downturn, and consequently Northern California companies will be penalized to a greater extent by the proposed regulations due to the additional costs which attend their business structure. The proposed regulations do not account for this difference in practice and will cause irreparable harm to Northern California businesses.

Response to Comment:

The Commissioner rejects this comment. The Commissioner notes that companies performing escrows exclusively in either Northern or Southern California each claim the proposed regulations disproportionately disadvantage them, casting doubt on the comments of both groups. To the extent Northern California UTCs maintain more offices because they also provide escrows, the additional revenue from the escrow business can reasonably be expected to cover those costs; if it does not in a given case, it suggests the company should – and would in a competitive market – close money-losing offices. Under the amended proposed regulations,

companies have until 2009 to bring their expenses in line with the regulations (and thus in line with the revenues they would receive in a competitive market).

Summary of Comment (page 25):

The interim rate reductions proposed by the regulations will cause immediate harm to many Northern California underwritten title companies. Because escrow services are provided by many Northern California underwritten title companies for convenience and not as the primary source of revenue, a statewide escrow rate reduction in Northern California will be much more harmful than the same reduction in Southern California. The proposed regulations are therefore neither reasonable nor rational.

Response to Comment:

The Commissioner rejects this comment. Again, the Commissioner notes that exactly the opposite is claimed by Southern California escrow companies. To the extent the commenter is claiming that escrow services are being provided “as a convenience, and not as a primary method of [obtaining] revenue,” it would not be in the public interest for the proposed regulations to allow the collection of excess charges to subsidize this business. The fact remains that escrow charges are dramatically lower in Northern California than in Southern California, underscoring the absence of competition. The Commissioner expects that the proposed regulations will rationalize these markets, providing consumers with rates from regulated firms that properly reflect the cost of providing the service and afford a reasonable profit.

Summary of Comment (page 26):

Rather than proceed with the proposed regulations, there are reasonable alternatives to the proposed regulations that the Commissioner should implement. For instance, rather than use the statistical plan for the purpose of setting rates, the Commissioner’s statistical plan should be focused on the gathering of data to evaluate whether individual filed rates are excessive because that is what the law allows. The statistical plan and data gathering process should be used to analyze the rates filed by each individual company on an individual basis. In order to ensure that the statistical plan is prescribed by “reasonable” rules and regulations, the plan should not require underwritten title companies to report financial data in such detail as to make reporting outside of the companies’ budgetary capabilities. Similarly, because the cost of complying with data reporting requirements is a legitimate business expense which will ultimately be paid for by the consumer, the Commissioner should propose an alternative statistical plan that minimizes reporting requirements to those data which are essential.

Response to Comment:

The Commissioner rejects this comment. The commenter fails to appreciate the fact that the best available measure of the reasonable costs of performing many of the functions of the title insurance business is found in the experience of other companies and the industry as a whole, so determination of the reasonableness of an individual company’s rates requires examination of industry-wide experience. Without the benefit of the statistical plan and calculations prescribed

by the proposed regulations, these determinations would have to be replicated in each company's hearing, making the task unmanageable and impracticable. With respect to the commenter's recommendation that the Commissioner rely on companies' existing reporting capabilities, the Commissioner has, in reviewing companies' existing reports and responses to data calls, found those capabilities to be inadequate to evaluate the reasonableness of rates. The Commissioner has found the reporting requirements of the proposed regulations to be reasonable and necessary.

Summary of Comment (page 26-27):

Rather than proceed with the proposed regulations, there are reasonable alternatives to the proposed regulations that the Commissioner should implement. The commenter shares the Commissioner's frustration with the perceived abuses perpetrated by licensees in "buying" business from those in the real estate and related industries. The commenter is aware of numerous practices that represent clear violations of the relevant rebating laws. While the commenter applauds the Commissioner's efforts to enforce the rebating laws, it would be far more equitable to focus on punishing those entities that violate the law rather than apply a regulatory approach that punishes everyone – including entities that are not deserving of punishment. The Commissioner should, therefore, revisit the existing regulations and bulletins and provide licensees with a clear roadmap of permissible activities. Similarly, the Commissioner should reintroduce legislation that would require the licensing of title professionals so that such professionals can be held personally accountable for their marketing activities.

Response to Comment:

The Commissioner accepts the commenter's agreement with his finding of improper business practices and rejects the balance of this comment. The Commissioner has found that it is not possible to identify and prosecute every instance of illegal rebating. Furthermore, the Commissioner has found that the market lacks a reasonable degree of competition, so even if all of the illegal practices were eradicated, market forces could not be relied upon to provide reasonable rates. While new legislation may be warranted, the proposed regulations are properly based on the statutory law as it currently exists.

Summary of Comment (page 27-28):

The Commissioner can take steps to increase competition in the title market by improving the licensing application procedures for new underwritten title companies, existing underwritten title companies that seek to expand their business to new locales in California and title insurers. Current licensing processes require as much as two years before a licensee can obtain a license.

Response to Comment:

The Commissioner rejects this comment. The comment lies beyond the scope of the proposed regulations. The commenter proffers no evidence that the facilitation of new market entrants would lead to a reasonable degree of competition. On the contrary, there is no evidence that a paucity of market participants is the cause of the absence of a reasonable degree of competition.

While streamlining the licensing process is worthy of further consideration, it offers no promise of obviating the need for the proposed regulations.

Summary of Comment (page 28):

The commenter supports the comments of the California Land Title Association, in which they urge the Commissioner to provide new notices and additional disclosures to consumers so that they may become more educated about their options when it comes to title insurance products and services. Online rate filing information would provide consumers with easy access to rate and service comparisons.

Response to Comment:

The Commissioner rejects this comment. Neither the California Land Title Association nor anyone else has identified consumer-education measures that can reasonably be expected to provide a reasonable degree of competition in this market. The fact remains that consumers do not understand the title and escrow products, are not even aware to any meaningful extent what these products are, and cannot be expected to comparison-shop for them. The real estate transaction is structured in a way that precludes consumers from exercising meaningful choice at a time and in a way that could feasibly introduce price-competition into this market.

Summary of Comment (page 28-29):

The proposed regulations will not permit a level of reasonable profitability for independent underwritten title companies like the commenter's company. Because companies like the commenter's are at the mercy of the rates set by the underwriters (title insurers), the proposed regulations will put the commenter's company and similar companies out of business.

Response to Comment:

The Commissioner rejects this comment. In general, underwriters complain that it is they who are at the mercy of UTCs and other market participants. The Commissioner notes that UTCs in California typically retain about 90% of the title premium (a higher fraction than the average for the rest of the country), casting doubt on the commenter's assertion of relative market power. In any event, the proposed regulations provide firms with the opportunity to charge rates that allow them to recover their reasonable costs and to earn a reasonable profit.

ADDENDUM TO COMMENTS OF PLACER TITLE COMPANY (BATES 1614-1630)

Summary of Comment (Bates page 1614):

The proposed regulations will be harmful to the employees of Calaveras Title Company. Employees of this company live the American Dream, are fortunate enough to be able to take time during their work schedules to attend to family business due to their short commutes, and the employees are primarily made up of working women who also take care of their families. It is an enviable position for a working mother to be able to balance work life with the duties of

care for one's family. The proposed regulations will result in a "ripple effect" in which the workplace will see a drastic decline in jobs, and will require people to look for jobs with longer and more expensive commutes, thereby reducing the amount of time that these individuals will be able to spend with their families and in their communities. This ripple effect will harm more than revenue streams. It will also have an incomprehensible impact on the personal lives of the employees of Calaveras Title Company.

Response to Comment:

The Commissioner rejects this comment. The Insurance Code prohibits excessive rates, which are defined as rates that are "unreasonably high for the insurance or other services provided." The Commissioner is not authorized to abide rates that are higher than reasonable so that employees of title and escrow companies may enjoy benefits not available to workers in other industries. If such benefits, as the commenter alleges, do not exist elsewhere in the economy, it suggests they would not exist in this industry were they a competitive market. It would not be reasonable to ask people who earn their livings in other jobs to pay excessive escrow charges so that employees of the escrow company may enjoy benefits they themselves do not enjoy.

Summary of Comment (Bates page 1615-1630):

Placer Title has attached identically-worded concurrences of 16 other persons who fully support the comments presented by Placer Title Company. They assert that the burdens of the interim rate reductions and statistical plan reporting requirements will not permit underwritten title companies to operate profitably in California. Moreover, the regulations are inconsistent with the statutory framework because the relevant statutes require the filing and review of rates on an individual basis. The regulations should, therefore, be withdrawn.

Response to Comment:

The Commissioner rejects this comment. The Commissioner has determined that the burdens of the proposed regulations are justified by the need to prevent the charging of excessive rates. The Commissioner has also determined that the proposed regulations conform to the applicable statutes. The proposed regulations permit each company to charge its own, chosen non-excessive rate. Any order prohibiting the charging of an excessive rate will be subject to an individual hearing, at which the decision will properly be informed by the results of the statistical plan, as contemplated by Insurance Code section 12401.5.